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BEFORE THE

U.S. DEPARTMENT OF TRANSPORTATION

WASHINGTON, D.C. 20590

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In the Matter of

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.

and

JOSEPH L. GALLOWAY

Complainants

UNITED AIRLINES, INC., AMERICAN AIRLINES, INC.,
DELTA AIRLINES, INC., NORTHWEST AIRLINES, INC.,
CONTINENTAL AIRLINES, INC., US AIRWAYS, INC.,
TRANS WORLD AIRLINES, INC., AMERICA WEST
AIRLINES, INC., ALASKA AIRLINES, INC., AMERICAN
TRANS AIR, HORIZON AIR INDUSTRIES, INC.,
MIDWEST EXPRESS, INC., AIR CANADA, KLM ROYAL
DUTCH AIRLINES, TACA INTERNATIONAL
AIRLINES, INC. and AIR FRANCE

Respondents

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: Docket OST-99-6410 - 6

ANSWER OF TACA INTERNATIONAL AIRLINES, S.A.

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December 10, 1999

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C. 20590

In the Matter of	:	
AMERICAN SOCIETY OF TRAVEL AGENTS, INC.	:	
and	:	
JOSEPH L. GALLOWAY	:	
Complainants	:	
v.	:	Docket OST-99-6410
UNITED AIRLINES, INC., AMERICAN AIRLINES, INC.,	:	
DELTA AIRLINES, INC., NORTHWEST AIRLINES, INC.,	:	
CONTINENTAL AIRLINES, INC., US AIRWAYS, INC.,	:	
TRANS WORLD AIRLINES, INC., AMERICA WEST	:	
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DUTCH AIRLINES, TACA INTERNATIONAL	:	
AIRLINES, INC. and AIR FRANCE	:	
Respondents	:	

ANSWER OF TACA INTERNATIONAL AIRLINES, S.A.

Pursuant to Rule 204(b) of the Department's Rules of Practice, TACA International Airlines, S.A. ("TACA") hereby answers in opposition to the Complaint of the American Society Travel Agents, Inc. ("ASTA") and its President, Joseph L. Galloway, together the "Complainants." The Complainants ask the Secretary of Transportation to find the reductions in travel agent commission rates from eight to five percent announced by the Respondent airlines to

be an unfair method of competition. The Complaint is without merit as it applies to TACA and should be dismissed.

INTRODUCTION

Following a lengthy recitation of the history and nature of the travel agent industry, Complainants allege that:

giant carriers...began to conclude that travel agents were an obstacle to their objectives (and)...came to understand that consolidation of the airline industry, combined with the success of passenger loyalty programs, had given them genuine market power over travel agencies. And, for the first time, an apparent alternative to distribution through travel agencies had emerged: the Internet, by which the airlines believed they could control directly the information provided to the public without the meddlesome interference by travel agents telling a somewhat different, and unbiased story.

(Complaint at 10) Complainants then suggest that TACA is part of a “campaign to eliminate or at the least severely impair the public’s access to travel agents. That course of conduct has substantially reduced, and now threatens to eliminate, competition in the market for travel services and to injure consumer welfare.” (*Id.* at 1 O-11)

Complainants list a litany of alleged steps by the Respondents to create a “revenue squeeze” culminating in the recent reduction in base domestic commission levels from eight percent to five percent. Complainants then enumerate other alleged actions taken individually or collectively through the Airline Reporting Corporation and/or the International Air Transport Association “that are intended to and have the effect of raising travel agent costs and impairing travel agency efficiency.” (*Id.* At 1 1- 12) Complainants assert that such practices “are intended

to and, if allowed to continue, will have the effect of impairing consumer access to travel agencies and travel agencies' access to consumers.” (rd.) However, in their conclusion, Complainants make clear that the alleged wrong they seek relief from is the Respondents' reductions in travel agent commission rates from eight to five percent. (*Id.* at 24)

By including TACA in their Complaint, Complainants place TACA in the heady company of global aviation giants against which TACA, a small foreign airline with limited resources, must itself struggle daily to compete. TACA has made substantial investments to attract passengers. It must continue to do so while offering competitive fares. In order to compete at all, TACA must constantly examine all elements of its business to reduce costs. TACA highly values its long-standing relationship with travel agents in the United States, Canada, Mexico, Central and South America, and throughout the rest of the world who help market its services. However, TACA's ability to compete is hindered if it pays higher commissions than its competitors. TACA's unilateral decision to reduce the level of base commissions was just one of many cost-cutting decisions it has had to make in order to compete.

TACA HAS NOT ENGAGED IN “UNLAWFUL PRACTICES AND METHODS OF COMPETITION”

Travel agents are just that--agents of the airline principals they represent. Passengers are free to purchase tickets from TACA's reservation center, its own ticket offices, or authorized travel agents. In their agency relationship, travel agents are not in direct competition with their principal airlines. Hence, by reducing commission levels, TACA has not engaged in “unfair

method(s) of competition.” In Third-Party Complaint of Pacific Travel International, Inc. v. American Airlines, Inc., DOT Order 95-1-2, January 4, 1995, the Department dismissed a third-party complaint and application for a restraining order against American Airlines which alleged that American engaged in unfair business practices. The Department stated:

Pacific, which was operating as American’s agent, was obligated “to obey all reasonable directions” of its principal. Restatement of the Law, Second, Agency 2d, §385(1). As the principal, American is entitled to impose reasonable restrictions on its agent’s sales of American’s services, and Pacific has not shown that the restrictions complained of are unreasonable.

(*Id.* at 4-5) While Pacific did not deal with commission levels, the Department clearly underscored the principal/agency relationship between airlines and travel agents.

TACA pays commissions for agents’ sales of scheduled air transportation on agents’ standard tickets (or such documents as TACA may prescribe) from time to time by TACA and subject to such terms and conditions as are set forth in communications from TACA to such agents. TACA possesses the right unilaterally to change commission levels and is not constrained in this respect. TACA has no written agreements with the agents regarding commissions. Travel agents have never challenged TACA’s right to modify commission rates. TACA was within its legal rights when it issued a notice to travel agents on October 14, 1999 announcing a new US and Canada point of sale base commission level of 5% and maximum payment levels effective October 16, 1999.

ASTA HAS NO STANDING TO FILE A THIRD-PARTY COMPLAINT UNDER 49 U.S.C. 41712.

Complainants seek relief from Respondents “for unfair practices and unfair methods of competition in air transportation and the sale of air transportation, in violation of 49 USC 41712, and request the Secretary of Transportation to order the Respondents to stop such unlawful practices and methods of competition.” (Complaint at 3) Section 41712 provides:

On the initiative of the Secretary of Transportation or the complaint of an air carrier, foreign air carrier, or ticket agent, and if the Secretary considers it is in the public interest, the Secretary may investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation. If the Secretary, after notice and an opportunity for a hearing, finds that an air carrier, foreign air carrier, or ticket agent is engaged in an unfair or deceptive practice or unfair method of competition, the Secretary shall order the air carrier, foreign air carrier, or ticket agent to stop the practice or method.

(Emphasis supplied.)

Complainants state that ASTA is a trade association of travel agents. Accordingly, it is not an “air carrier, foreign air carrier or ticket agent” and lacks standing to bring a complaint. Complainant Galloway is a travel agent. However, TACA has no written agreement with Mr. Galloway.

REDUCING TRAVEL AGENT COMMISSIONS IS NOT ADVERSE TO THE PUBLIC INTEREST

Section 41712 permits the Secretary to undertake an investigation if he considers one to be in the public interest. Holding costs in check in order to compete and thereby provide the

traveling public with competitive alternatives is clearly in the public interest-even if doing so does not maintain commission rates at the levels travel agents would like. Moreover, travel agents are not precluded from charging fees for the services they provide. In their overview of the travel agency industry, Complainants make the following points:

Agents serve as the only one-stop, neutral source of comprehensive information and counseling about an incredibly complex, constantly changing array of fares and services that confronts the general public.

...

Travel agents are the only efficient, independent and comprehensive neutral sources of information for airline travel options.

...

Since deregulation of the U.S. airline industry in the late 1970's, the public has had the choice of buying directly from suppliers such as airlines at no additional cost and overwhelmingly has chosen to deal with travel agencies.

...

The vast majority of consumers prefer dealing with travel agencies rather than airlines when purchasing air transportation because agencies deliver far more value, convenience and services.

...

In addition, compared to direct-dealing with airlines, consumers' transaction costs are often lower through travel agencies, especially when many travel arrangements are joint purchases of the products of several travel suppliers, air transportation and hotel/rental car, for example.

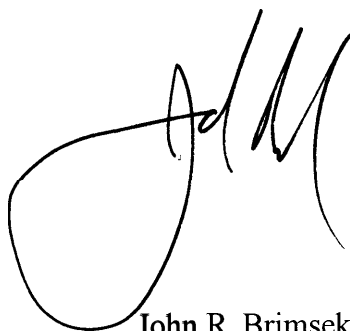
(*Id.* At 8-9) If such is the case, the traveling public may well be willing to pay ASTA's members increased fees for services which they find to be valuable. Further, travel agents are free to book on other airlines offering higher commissions.

CONCLUSION

As the Department stated in Pacific, "we believe that the Department's enforcement authority and resources should be used to protect the public interest and not merely to resolve

private grievances.” (*Id.* at 5) Complainants have not demonstrated that TACA’s action in reducing its base commission level is “an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation” or is adverse to the public interest. Accordingly, the Complaint should be dismissed.

Respectfully submitted,

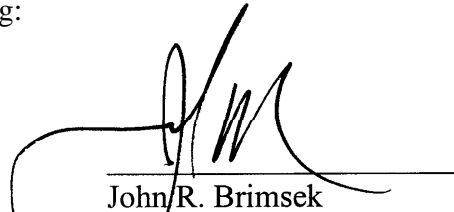
A handwritten signature in black ink, appearing to be 'J. Brimsek', written over a large, loopy initial 'J'.

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December 10, 1999

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Answer this 10th day of December 1999 been served by First Class mail, postage prepaid on the following:



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